IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 3104 of 2005

Between:

1 G. Sadanand, S/o. Late Shivaiah,
R/o. H.No. 6-3-902/A, Somajiguda, Hyderabad.
2 G. Dayanand, S/o. Late Shivaiah,
R/o. H.No. 6-3-902/A, Somajiguda, Hyderabad.
3 G. Krishna, S/o. Late Shivaiah,
R/o. H.No. 6-3-902/A, Somajiguda, Hyderabad.
4 G. Mallesh, S/o. Late Shivaiah,
R/o. H.No. 6-3-902/A, Somajiguda, Hyderabad.

... PETITIONERS

AND

1 The Commissioner, Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad.
2 The Chief City Planner, Muncipal Corporation of Hyderabad,
Tank Bund, Hyderabad.
3 Ms. Jagnandan Malik D/o. late M.S. Malik
R/o. 6-3-903/8/1, Somajiguda, Hyderabad
R3 is impleaded as per court order dt. 1-4-2005 in WPMP 8539 of 2005

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Order, direction or a writ more particularly one in the nature of a Writ of Mandamus declaring that the petitioners are entitled for the regularization of the revised plan submitted by the petitioners in respect of the premises bearing Municipal No. 6-3-902/A, Somajiguda, Hyderabad.

Counsel for the Petitioners: MR.T.LAKSHMI NARAYANA

Counsel for the Respondent Nos.1 and 2: SMT.G.JYOTHI KIRAN, Standing

Counsel for M.C.H.

Counsel for the Respondent No.3: MR.VILAS V. AFZULPURKAR

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.3104 OF 2005

ORDER:

This writ petition is filed seeking a declaration that the petitioners are entitled for the regularization of the revised plan submitted by them in respect of the premises bearing Municipal No.6-3-902/A , Somajiguda, Hyderabad.

The petitioners claim to be the owners of the premises bearing Municipal No.6-3-902/A admeasuring 2006.40 Sq.mts., Somajiguda, Hyderabad. It is not in dispute that on an application made by the petitioners, the Municipal Corporation of Hyderabad granted permission for the construction of a Commercial Complex in the said premises for the construction of cellar, stilt + five upper floors vide Permit No.45/13, dated 22-9-2003. The said sanctioned permit was released to the petitioners on 24-09-2003 having collected the permit fee of Rs.33,68,104/- (including the compounding fee of Rs.8,425/-) and the processing fee of Rs.7,05,861/-. It appears that while the application of the petitioners for sanction of building permission was under consideration, the petitioners started construction work and therefore the Corporation levied the compounding fee of Rs.8,425/- and the same was admittedly paid by the petitioners before the release of the sanctioned permit.

However, the petitioners were served with a show-cause notice dated 26-7-2004 under Section 452 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') alleging violation of the provisions of Sections 426 & 433 of the Act

and the Building Rules and Bye-laws of 1981 and calling upon the petitioners to explain within 3 days as to why action should not be initiated under the Act for removal of constructions made contrary to the sanctioned plan. The following are the allegations specified in the said notice :

> *"Unauthorised construction of sub-cellar and projected roof in front and cellars are in violation of Rules in force."*

In response to the said notice, the petitioners submitted an explanation dated 29-7-2004 stating that they were granted the sanction vide Permit No.45/13 for construction of Cellar, Stilt + Upper Five Floors. It was also explained that though they were constrained to commence the construction before the sanction was granted, subsequently having inspected the constructions made, the compounding fee was collected and the constructions were regularized. It is also stated that they are proceeding with the constructions in respect of Cellar, Stilt and above Five Floors without any violation or deviations of the sanctioned plan and therefore the further proceedings may be dropped. Since the petitioners were apprehending coercive steps by the staff of the Corporation, the petitioners filed W.P.No.13488 of 2004 which was disposed of by order dated 13-09-2004 with a direction to the Corporation to accord personal hearing and an opportunity to the petitioners before passing any orders under Section 636 of the Act. The operative portion of the said order runs as under :

> *"The learned standing counsel for the Municipal Corporation of Hyderabad submits that after following the necessary procedure under Section 636 of the Act only the authorities have to proceed further in the matter.*
>
> *In view of the same, if the petitioners require any personal hearing to explain their case, the respondent authorities shall provide such opportunity to the petitioners before passing any order under Section 636 of the Act and if any such order is passed the same shall not be implemented for a period of two weeks enabling the petitioners to avail the appropriate remedy available to them. Till passing of such order under Section 636 of the Act, the respondent authorities shall not demolish the structure pursuant to the impugned notice.*
>
> *With the above directions, the writ petition is disposed of. No costs."*

It is not in dispute that in pursuance of the order in W.P.No. 13488 of 2004 the

petitioners were served with notice of hearing and on 9-8-2004 the General Power of Attorney Holder of the petitioners was present before the 1st respondent. However, on a request made by the petitioners, the matter was adjourned and thereafter the Corporation by proceedings dated 19-08-2004 requested the petitioners to submit their explanation along with material papers within ten days for taking further action. The petitioners state that on 31-08-2004 they have submitted the explanation with all necessary papers.

While so, without communicating any date of hearing to the petitioners, the first respondent passed an order under Section 636 of the Act, dated 5-10-2004, served on the petitioners on 6-10-2004, stating that their reply dated 29-7-2004 in response to the notice issued under Section 452 of the Act was examined and the contents of the said reply are found to be not satisfactory and therefore the petitioners are deemed to have violated the provisions contained in Sections 440, 452 and 636 of the Act. The petitioners were accordingly called upon to show-cause as to why the portion of the work commenced contrary to the provisions of the Act should not be removed / altered or amended / pulled down. In response to the said notice, the petitioners submitted a reply dated 11-10-2004 objecting to the action proposed. However, a further notice dated 25-10-2004 was issued stating that the petitioners failed to remove the deviated portion mentioned in the Notice dated 5-10-2004 and their reply dated 11-10-2004 is not satisfactory and therefore directing the petitioners to remove the deviated portion within 24 hours from the date of receipt of the said notice, as required under Section 636 of the Act, failing which the action will be taken as per Rules to remove/demolish the deviations departmentally. Challenging the said notice, the petitioners filed W.P.No.19824 of 2004 in which this Court granted interim stay of demolition pending the writ petition.

While the matters stood thus, the petitioners submitted the revised plans dated 16-11-2004 for the construction of sub-cellar, cellar, stilt + five floors as per the provisions of G.O.Ms.No.483, dated 24-8-1998 and also the guidelines under the Government Memo dated 14-11-2003. The said application was rejected by order dated 28-12-2004. The petitioners contend that the rejection of revised plans merely reiterating the deviations as pointed out in the show-cause notice dated 6-10-2004

and the order dated 25-10-2004, was erroneous and without application of mind to the provisions of G.O.Ms.No.483, dated 24-08-1998 and the Government Memo dated 14-11-2003 and therefore they made a representation dated 30-12-2004 requesting to reconsider their request for sanction of revised plans. The petitioners allege that while the said application was still pending, the staff of the Municipal Corporation have started harassing the petitioners by interfering with the construction process and by attempting to demolish the constructions. Hence, this writ petition.

On behalf of the respondent Corporation, a counter-affidavit has been filed in which the fact that the petitioners were granted sanctioned permit for construction of cellar, stilt + upper five floors vide permit No.45/13, dated 22-09-2003 has been admitted. Though it is alleged that the petitioners have commenced the construction even before submitting the proposals for building permission, it is stated that the Corporation issued permission on collection of compounding fee. It is further alleged that the petitioners have deviated the sanctioned plan during the construction and that they were proceeding with the construction of the building in violation of G.O.Ms.No.423, dated 31-7-1998. It is also stated that the petitioners have never submitted any proposal for sub-cellar and that they submitted revised plans only on 16-11-2004 for sub-cellar, cellar + five upper floors, but the same was rejected vide proceedings dated 29-12-2004. In spite of the same, the petitioners have been proceeding with the construction and therefore the Corporation has deputed their staff round the clock at site to stop construction, but they have not attempted demolition as alleged. Since the revised plans were already rejected, they are not entitled to seek reconsideration of the same. The action of the respondent Corporation in rejecting the revised plans is in accordance with law and the writ petition is devoid of merit and liable to be dismissed.

I have heard the learned Counsel for the petitioners, the learned Standing Counsel appearing for the respondent Corporation as well as the learned Counsel appearing for the third respondent who got herself impleaded as party respondent to the writ petition.

The learned Counsel for the petitioners vehemently contended that the entire procedure adopted by the respondents is vindictive, arbitrary and illegal. The

learned Counsel points out that in spite of the specific directions by this Court in W.P.No.13488 of 2004, the respondent Corporation has not afforded an opportunity of hearing to the petitioners before passing the final order under Section 636 of the Act. The learned Counsel contends that the findings recorded by the 1st respondent in the order dated 25-10-2004 are erroneous and without application of mind to the facts of the case as well as the explanations offered by the petitioners. It is further contended that the petitioners are entitled to the benefit under G.O.Ms.483, dated 24-8-1998 as reiterated in the Government Memo dated 14-11-2003 and therefore the petitioners submitted the revised plans dated 16-11-2004 in terms of G.O.Ms.No.483, Municipal Administration & Urban Development (M-1) Department, dated 24-8-1998 to set at rest the allegations about the deviations. The learned Counsel submits that the petitioners are entitled to sanction of such revised plans in terms of G.O.Ms.No.483, dated 24-8-1998 and G.O.Ms.No.423, dated 31-7-1998 and the Corporation is not justified in not considering the request of the petitioners.

On the other hand, the learned Standing Counsel appearing for the Corporation contended that the revised plans submitted by the petitioner were already rejected and therefore the further representations made by them for reconsideration cannot be considered. It is also contended that the revised plans as submitted by the petitioners virtually amount to regularization of the constructions made by the petitioners in violation of the sanctioned plan and therefore the writ petition is misconceived and liable to be dismissed.

The learned Counsel appearing for the 3rd respondent contended that the constructions being made by the petitioners are unauthorised and on account of the said constructions, the building of the third respondent who is the immediate neighbour of the writ petitioners developed cracks and therefore they cannot be permitted to proceed with any further constructions. It is vehemently contended that since the excavations of cellar is beyond the permissible limit and the petitioners have also indulged in several other deviations in the sanctioned plan, the Corporation has rightly passed the order of removal under Section 636 of the HMC Act and the interference of this Court at this stage is not at all warranted.

On a perusal of the respective pleadings of the petitioners and the respondent Corporation, it appears that the whole controversy is with regard to entitlement of the petitioners to construct the sub-cellar. The respondents allege that the petitioners

proceeded to construct the sub-cellar and raised other structures in violation of the sanctioned plan. On the other hand, the specific case of the petitioners is that they are entitled to make such constructions in terms of G.O.Ms.No.483, dated 24-8-1998 and G.O.Ms.No.423, dated 31-7-1998 and Government Memo dated 14-11-2003 and there is no bar to consider the revised plans submitted by them in terms of the said Government Orders.

It is not in dispute that the petitioners constructed a Storm Water Drain running adjacent to the premises in question as per the directions of the Executive Engineer of the respondent Corporation. The petitioners state that they have spent about Rs.20 lakhs for the said purpose. That apart, for the purpose of road-widening, at the request of the respondent Corporation the petitioners have left an area of 179 sq. yards without claiming any compensation. In view of the same, the petitioners claim that they are entitled to certain benefits such as relaxation of the setbacks and etc. under G.O.Ms.No.483, dated 24-8-1998 as reiterated under the Government Memo dated 14-11-2003. The respondent Corporation does not dispute the said claim of the petitioners, but in the counter-affidavit it is pleaded that such benefits were already extended to the petitioners. The petitioners filed an affidavit in Reply disputing the stand taken by the respondent Corporation and contending that the benefits such as Coverage and additional FSI were not availed by them and therefore while submitting the revised plans dated 16-11-2004 as well as in their petition for reconsideration dated 30-12-2004 and the subsequent comprehensive representation dated 26-2-2005 they have made the said claims, but the Corporation failed to consider the same.

It is to be noted that under G.O.Ms.No.483, Municipal Administration & Urban Development (M-1) Department, dated 24-8-1998, the powers were delegated to the Commissioner and Special Officer, Municipal Corporation of Hyderabad to accord relaxations to the building regulations/zoning regulations in respect of the land affected in road-widening and surrendered by owners free of cost. Subsequently vide Government Memo dated 14-11-2003 having decided as a policy to extend the benefit of G.O.Ms.No.483, dated 24-8-1998 to the constructions made or commenced without permission, certain guidelines were issued for granting building permissions where the applicants have already commenced or made the constructions after surrendering the land free of cost to M.C.H. for road-widening. It is

relevant to extract the said guidelines which run as under :

> *"3. Government after careful examination of the matter, as a policy have decided to extend the benefit of G.O.Ms.No.483, M.A. dated 24-8-1998 to the constructions made/commenced without permission and hereby issue the following guidelines :*

a. *The benefit of G.O.Ms.No.483, M.A., dated 24-8-1998 is extended only to the cases where the applicants have commenced / made the constructions after surrendering the land free of cost to MCH for road widening and if the relaxations required / sought for by the applicants would have been considered by the Commissioner, MCH in the normal course under the G.O.Ms.No.483, M.A., dated 24-8-1998, if the applicants would have come forward for regular building permissions before commencing / making the constructions.*

b. *However, while considering such cases the Commissioner, MCH shall follow the guidelines issued in G.O.Ms.No.483, M.A., dated 24-8-1998 i.e., fixing regular building line / ensuring public interest and safety and smooth flow of traffic etc.*

c. *While considering such cases, the Commissioner, MCH shall levy the compounding fee by invoking Section 440 of HMC Act.*

d. *While considering such case the Commissioner, MCH shall decide the issue on merits of each without prejudice to the constructions already made and the relaxations sought for by the applicants, and if permission cannot be granted under the G.O.Ms.No.483, M.A., dated 24-8-1998, the same shall be rejected and action shall be taken against such unauthorised constructions as per rules, and*

e. *It is also clarified that this policy shall not be treated as a Building Regularisation Scheme.*

As can be seen, one of the guidelines is that the M.C.H. shall levy the compounding fee by invoking Section 440 of the Act and that the Corporation shall decide the issue on merits of each case without prejudice to the constructions already made and the relaxations sought for by the applicants.

While placing reliance upon the said guidelines, the petitioners contend that their request for sanction of revised plans is well within the powers delegated to the 1st respondent under G.O.Ms.No.483, dated 24-8-1998 and therefore he ought to have considered the revised plans in terms of the guidelines issued under

Government Memo dated 14-11-2003. The specific contention of the petitioners is that the 1st respondent failed to exercise the power conferred under G.O.Ms.No.483, dated 24-8-1998.

On a perusal of the order dated 29-12-2004 whereunder the 1st respondent rejected the revised plan submitted by the petitioners, it does not appear that the 1st respondent has examined the request of the petitioners in the light of G.O.Ms.No.483, dated 24-8-1998, particularly the guidelines issued under Government Memo dated 14-11-2003. May be that, the petitioners have constructed sub-cellar in deviation of the sanctioned plan, however when the petitioners sought for sanction of the revised plans which include construction of sub-cellar, the 1st respondent ought to have examined whether the same is permissible under the guidelines issued under the Government Memo dated 14-11-2003. Obviously, such exercise has not been done. It is also relevant to note that pending this writ petition, the petitioners have submitted a comprehensive representation dated 26-2-2005 bringing to the notice of the respondents various aspects under which the petitioners are entitled for the sanction of the revised plans. However, by order dated 3-3-2005 the request of the petitioners was again rejected without reference to the provisions of G.O.Ms.No.423, dated 31-7-1998, G.O.Ms.NO.483, dated 24-8-1998 and particularly the guidelines under Government Memo dated 14-11-2003.

I also find force in the contention of the learned counsel for the petitioners that the petitioners were not afforded an opportunity of hearing at any point of time before taking the impugned decision.

Though the learned Standing Counsel for the respondent Corporation contends that the order dated 25-10-2004 passed under Section 636 of the Act has become final and therefore the request of the petitioners does not deserve any consideration, on a careful consideration of the entire material on record, I am of the opinion that the order dated 25-10-2004 does not stand in the way of the respondent Corporation to consider the request of the petitioners for sanction of the revised plans in terms of the guidelines prescribed under Government Memo dated 14-11-2003. As already pointed out, clause (a) of the guidelines dated 14-11-2003 made it

clear that the benefit of G.O.Ms.No.483, dated 24-8-1998 is extended to the cases where the applicants have commenced or made the constructions after surrendering the land free of cost to M.C.H. for road-widening.

As a matter of fact, the record produced by the learned Standing Counsel for the Corporation reveals that in pursuance of the application made by the petitioners for sanction of the revised plan which included permission for construction of sub-cellar, cellar, ground + upper five floors, the matter was referred to the Town Planning Section and some of the aspects were examined in terms of G.O.Ms.No.483, dated 24-8-1998 and the findings were recorded on several technical aspects. However, the request of the petitioners for sanction of the revised plans was rejected without taking into consideration any of the said aspects and merely reiterating the reasons that were stated in the order dated 25-10-2004. A perusal of the order dated 28/29-12-2004 shows that the revised plans were rejected primarily on the ground that the petitioners have constructed the sub-cellar in violation of the sanctioned plan which is apparently not in conformity with the guidelines under the Government Memo dated 14-11-2003.

The objection raised by the learned Standing Counsel for the Corporation that since the revised plans submitted by the petitioners were already rejected, the petitioners are not entitled to seek reconsideration cannot be accepted since clause-3 of G.O.Ms.No.423, dated 31-07-1998 provides for Review of rejection of building applications. It is clear from the said clause that on rejection of a building application, the owner may represent the case within seven days in which event after hearing, the concerned Authority shall communicate its decision on the representation. Hence, as rightly contended by the learned Counsel for the petitioners, the 1st respondent ought to have reconsidered the issue in pursuance of the representation made by the petitioners on 30-12-2004.

So far as the third respondent is concerned, it is clear that her claim is only with regard to the alleged damage caused to her building on account of the unauthorised constructions made by the petitioners. If that be so, it is always open to her to work out the common law remedy for the damages, if any, she is entitled to, but the same cannot be gone into by this Court. Since evidently the grievance of the

writ petitioners in the case on hand is only with regard to the inaction on the part of the respondent Corporation to consider the revised plan submitted by them, the dispute is solely between the petitioners and the Corporation regarding alleged deviations and the request of the petitioners for sanction of the revised plans which has to be considered by the respondent Corporation in terms of G.O.Ms.No.483, dated 24-8-1998 and the guidelines under the Govt. Memo dated 14-11-2003. The third respondent being a third party to the said dispute is not entitled to intervene.

Accordingly, the orders dated 28/29-12-2004 and 3-3-2005 are set aside and the Writ Petition is disposed of with a direction to the Respondent Corporation to consider the request of the petitioners for sanction of the revised plans afresh in terms of G.O.Ms.No.483, dated 24-8-1998 and G.O.Ms.No.423, dated 31-7-1998 and the guidelines under the Government Memo dated 14-11-2003 and to pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order.

It is made clear that before taking such a decision, the petitioners shall be afforded an opportunity of personal hearing duly informing them the date of hearing in advance. Till such a decision is taken and appropriate orders are passed, the petitioners shall not proceed with the construction of any structures as pointed out in the notice dated 26-7-2004. However, it is open to them to carry on the constructions in respect of undisputed areas as per the sanctioned plan dated 22-9-2003 and the respondents shall not interfere with the same.

The Writ Petition is accordingly disposed of. No costs.

_____

19th April, 2005.

gbs

... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner, Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad.
2 The Chief City Planner, Muncipal Corporation of Hyderabad,
Tank Bund, Hyderabad.
3 2 CD copies